IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORIGINAL SIDE.

WRIT PETITION NO. 905 OF 1993.

Shri Jugal Kishore,
Prop.of M/s Krishnan Dev
Hosiery. ..Petitioner.

vs.

Union of India & ors. ..Respondents.

Shri K.R. Bulchandani i/b Kamal & Co. for the petitioner.

Shri S.M. Shah with A.S. Rao for the respondents.

CORAM: V.C.DAGA &
J.P.DEVADHAR,JJ.
DATED: 16-3-2005.

P.C.

1. This petition is directed against the order dated 22.7.1990 passed by the Assistant Collector of Customs, Appraising Group, confirming the demand notice dated 12.12.1988, holding that the petitioners have not fulfilled their export obligations with respect to the Licence No. P/L/3011365 dated 23.2.1984.

2. Admittedly, the demand notice was issued and confirmed without issuing any prior show cause notice and/or without affording any opportunity of hearing to the petitioners.

3. The petitioners claim that they have already fulfilled all export obligations. In support of this submission they have placed reliance on the letter dated 5.8.1986 (Ex.E) addressed to respondent No.2, wherein this fact was asserted by them. In the return, there is no denial either about receipt of the said letter or contents thereof. Even in the petition, there is a specific averment by way of reply in that behalf. The same has not been denied by the respondents in their counter affidavit.

4. In the above view of the matter, the demand notice is also unsustainable, being in breach of principles of natural justice.

5. So far as show cause notice issued by respondent No.2 and 3 is concerned, there is no material to suggest that the said show cause notice has been adjudicated upon by respondent No.2. In spite of the pendency of the petition for past more than 12 years, no steps have been taken by respondent No.2 either to file return or counter affidavit in this behalf. Learned Counsel for the Revenue is also not in a position to make any statement as to whether or not show cause notice has been adjudicated upon. In the absence of any material on record, we have no option

but to presume that the said show cause notice has not yet been adjudicated upon by respondent No.2.

6. In the above premises, respondent No.2 is directed to proceed to adjudicate upon the said show cause notice following principles of natural justice with further direction to furnish copies of the documents as demanded by the petitioner vide letter dated 5th August 1986.

7. The petitioners are also directed to file their reply to the show cause notice dated 28.3.1990 and also to the notice of demand raised by the Customs Department within 8 weeks from the date of receipt of documents from respondent No.2.

8. In the above view of the matter, notice of demand issued by respondent No.2 dated 28.3.1990 (Ex.H) is converted into show cause notice and matter is remitted to the respondent Nos. 2 and 3 for adjudication in accordance with law, following principles of natural justice keeping all rival contentions open.

9. Petition stands disposed of accordingly with no order as to costs.

(J.P.DEVADHAR,J) (V.C.DAGA,J.)

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